



Jeannea Madsen (“Madsen”) appeals the White Circuit Court’s denial of her petition to terminate Deborah and Jimmie Jones’s (“the Joneses”) guardianship over her minor child, A.M. Madsen raises several issues, which we consolidate and restate as:

- I. Whether the trial court issued specific findings of fact in its denial of Madsen’s petition to terminate the guardianship; and,
- II. Whether the trial court erroneously placed the burden of proof on Madsen to demonstrate that terminating the guardianship was in A.M.’s best interests.

Concluding that the trial court did not issue sufficiently detailed and specific findings and that it erroneously placed the burden of proof on Madsen, we reverse and remand for proceedings consistent with this opinion.

### **Facts and Procedural History**

A.M. was born in 1992 and is now fifteen years old. A.M.’s paternal grandparents, the Joneses, were appointed as temporary guardians of A.M. on August 12, 2003. They were appointed as A.M.’s permanent guardians on November 7, 2003, and A.M. has continued to live with them. However, Madsen has filed several petitions to modify or terminate the guardianship, all of which have been denied.

On February 23, 2006, the Joneses submitted a report to the court, stating that, without their knowledge, A.M. had sold four Adderall tablets (her prescription medication) to students at her high school. As a result, she was expelled until January 2007, but the Joneses made sure that A.M. received outbound schooling during this time. A.M. pled guilty in juvenile court to Class A felony dealing in a schedule II controlled substance, and she was put on formal supervision for six months with the Clinton County Juvenile Probation Department. Upon learning of this incident, on February 28, 2006,

Madsen filed the most recent petition to terminate the Joneses' guardianship. The trial court held a hearing on the petition on May 31, 2006.

The Joneses presented evidence that they had ensured A.M. was attending an alcohol/drug education class and counseling, as well as taking on-line classes and classes through outbound education. They expressed concern that if the guardianship were to be terminated, Madsen would not ensure that A.M. attended school or counseling or that A.M. finished her orthodontic work, for which they have paid. The Joneses also worried that Madsen's boyfriend would belittle and demean A.M., as he has done in the past. The Joneses presented evidence that Madsen failed to keep A.M.'s medications locked up while she was visiting, in violation of A.M.'s probation. Additionally, they presented an e-mail that Madsen wrote to Deborah Jones on May 25, 2005, offering to make a cash settlement in return for giving up custody of A.M. Tr. p. 87. Madsen, on the other hand, testified that if A.M. were returned to her, she would ensure that A.M. attended school, received counseling, and maintained a relationship with the Joneses.

The trial court denied Madsen's petition to terminate the guardianship on June 8, 2006. Madsen now appeals. Additional facts will be provided as necessary.

### **Standard of Review**

Child custody determinations are within the discretion of the trial court and will not be disturbed except for an abuse of discretion. Truelove v. Truelove, 855 N.E.2d 311, 314 (Ind. Ct. App. 2006) (citation omitted). We will not reverse unless the trial court's decision is against the logic and effect of the facts and circumstances before it or the reasonable inferences drawn therefrom. Id. In reviewing a judgment requiring proof

by clear and convincing evidence, an appellate court may not impose its own view as to whether the evidence is clear and convincing but must determine, by considering only the probative evidence and reasonable inferences supporting the judgment and without weighing the evidence or assessing witness credibility, whether a reasonable trier of fact could conclude that the judgment was established by clear and convincing evidence. In re Guardianship of B.H., 770 N.E.2d 283, 288 (Ind. 2002).

### **I. Specific Findings**

First, Madsen contends that the trial court's order erroneously failed to include specific findings of fact. The trial court's order provided:

This Court, being duly advised, having reviewed the record of proceedings, and having considered the evidence presented at the evidentiary hearing, now FINDS and ORDERS that the Mother/Former Wife's Petition To End Guardianship, Removal of Child and Custody of Child filed on February 28, 2006, should and shall be denied. The Court finds that the Mother/Former Wife has not presented sufficient evidence to demonstrate that there is a material change of circumstances so substantial, significant and continuing so as to show that the Guardianship is no longer necessary and reasonable. The Mother/Former Wife has not sufficiently demonstrated that the existing Guardianship is no longer in the child's best interest. The evidence presented supports the continuation of the Guardianship.

Br. of Appellant at 18-19.

In In re Guardianship of A.R.S., 816 N.E.2d 1160, 1162 (Ind. Ct. App. 2004) this court extended the requirement of issuing detailed and specific findings to denials of petitions to terminate guardianship. We did so for two reasons.

First, the issues are the same regardless of whether the placement is the initial placement or a question of whether the placement should be continued. Second, the reason behind requiring detailed and specific findings applies in equal force to termination of guardianship petitions, i.e. notifying the parties and the reviewing court of the facts and theory upon which the decision is based.

Id. at 1162-63.

Here, the trial court's order did not contain any specific findings on which it based its decision. Rather, it summarily stated that Madsen had failed to produce sufficient evidence to prove that the guardianship was not in A.M.'s best interests. As in In re Guardianship of A.R.S., the absence of detailed findings has hampered our review of this case and made it difficult to ascertain the factual basis underlying the trial court's decision. See id. Therefore, we must reverse and remand this cause to the trial court to issue detailed and specific findings of fact.

## **II. Burden of Proof**

Madsen also claims that the trial court misstated the law and misplaced the burden of proof on her as the natural parent. As there appears to be a question regarding the appropriate analysis, we address the correct standard for the trial court to use on remand.

There is a strong presumption in all cases that a child's best interests are ordinarily served by placement in the custody of a natural parent. In re Guardianship of B.H., 770 N.E.2d at 287. "This presumption does provide a measure of protection for the rights of the natural parent, but, more importantly, it embodies innumerable social, psychological, cultural, and biological considerations that significantly benefit the child and serve the child's best interests." Id. Further supporting this presumption is the natural parent's fundamental right under the Fourteenth Amendment's Due Process clause to make decisions concerning the care, custody, and control of their children. Troxel v. Granville, 530 U.S. 57, 65 (2000). Consequently, this presumption is the logical starting point for a court's analysis in any proceeding relating to custody.

The second step of the court's analysis is to determine whether a third party, other than the natural parent, has rebutted this presumption. This presumption may not be overcome merely because a third person could provide "the better things in life" for the child. In re Guardianship of B.H., 770 N.E.2d at 287 (citation omitted). In fact, our supreme court has rejected the notion that a trial court may place a child with a third party by solely considering the "best interests" of the child. Id. Instead, before placing a child in the custody of a person other than the natural parent, the third party must rebut the presumption by clear and convincing evidence. Evidence sufficient to rebut the presumption may consist of, but need not necessarily be limited to, the natural parent's unfitness, the natural parent's acquiescence to the guardianship, or demonstrating that a strong emotional bond has formed between the child and the third person. Id.

The issue is not merely the "fault" of the natural parent. Rather, it is whether the important and strong presumption that a child's interests are best served by placement with the natural parent is clearly and convincingly overcome by evidence proving that the child's best interests are substantially and significantly served by placement with another person.

In re Guardianship of A.R.S., 816 N.E.2d at 1162 (citing In re Guardianship of B.H., 770 N.E.2d at 287).

Only once this presumption is rebutted does the trial court engage in a general best interests analysis. This best interests test is a "separate analysis in custody proceedings involving a third party that is reached *only after* the presumption in favor of the parent has been rebutted." In re Guardianship of L.L., 745 N.E.2d 222, 230 (Ind. Ct. App. 2001), trans. denied (emphasis added). In this analysis, the trial court determines whether it is in the best interests of the child to be placed in the custody of the third party. Id.

Here, the trial court determined: “The Mother/Former Wife has not presented sufficient evidence to demonstrate that there is a material change of circumstances so substantial, significant and continuing so as to show that the Guardianship is no longer necessary and reasonable.” Br. of Appellant at 18-19. Clearly, this is a misstatement of law as it erroneously assigns the burden of proof to the natural parent.

Indiana law has traditionally recognized that “natural parents are entitled to the custody of their minor children, except when they are unsuitable persons to be entrusted with their care, control, and education.” Gilmore v. Kitson, 165 Ind. 402, 406, 74 N.E. 1083, 1084 (1905). Therefore, in any proceeding involving custody, the trial court must start with the presumption that it is in the best interest of the child to be placed in the custody of the natural parent. In re Paternity of V.M., 790 N.E.2d 1005, 1008 (Ind. Ct. App. 2003). This presumption in favor of natural parents is present not only in proceedings to establish a guardianship but also in proceedings to terminate a guardianship, like the one in the case at hand. In re Guardianship of L.L., 745 N.E.2d at 230. The third party, the Joneses in this case, have the burden to overcome this presumption. In re Paternity of V.M., 790 N.E.2d at 1008. Therefore, the trial court erroneously placed the burden of proof on Madsen. Only once a third party has rebutted the presumption by clear and convincing evidence may the trial court engage in a best interest analysis to determine the appropriate custody of the child.

The Joneses, however, contend that the trial court did find that Madsen was “unfit” to take care of A.M. by clear and convincing evidence. We cannot agree. The plain language of the trial court’s order states that it denies Madsen’s petition for

termination of the guardianship because Madsen had “not presented sufficient evidence to demonstrate that there [was] a material change of circumstances so substantial, significant, and continuing so as to show that the Guardianship is no longer necessary and reasonable.” Br. of Appellant at 18-19. Given this unambiguous language, we conclude that the trial court erroneously placed the burden of proof on Madsen to show that terminating the guardianship was in A.M.’s best interests.

### **Conclusion**

We conclude that the trial court failed to list specific findings in its order for denying Madsen’s petition to terminate the Joneses’ guardianship over A.M. We further conclude that the trial court erroneously assigned the burden of proof to Madsen to show that terminating the guardianship was in A.M.’s best interests.

Reversed and remanded for proceedings consistent with this opinion.

SHARPNACK, J., and KIRSCH, J., concur.